



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Homer Leonard, Speaker
House of Representatives
Austin, Texas

Dear Sir:

Opinion No. 0-3587
Re: Constitutionality of
Senate Bill No. 453
fixing compensation of
certain county officers
in counties having a
population of more than
29,240 and less than
29,340.

We have your letter of May 22, 1941, requesting our opinion on the constitutionality of the above described Bill. In your letter you refer to this Bill as House Bill No. 453 but the Bill attached to your letter designates the same as Senate Bill No. 453.

In order to determine the constitutionality of this Bill, it will be necessary to consider only the caption thereof, which reads as follows:

"A Bill to be Entitled: An Act fixing the compensation of county officers in all counties in the State of Texas having a population of more than twenty-nine thousand two hundred forty (29,240) and less than twenty-nine thousand three hundred forty (29,340), according to the last preceding Federal Census; repealing all laws and parts of laws in conflict herewith to the extent of such conflict only; and declaring an emergency."

This department has written many opinions holding that similar Bills, which seek to fix the salaries of county officers in a particular county, are in violation of Section 56 of Article 3 of the State Constitution which provides in part:

Honorable Homer Leonard, Page 2

"The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law authorizing:

"* * *.

"Regulating the affairs of counties,
* * *."

Among our opinions holding unconstitutional similar Bills containing population brackets of this type, are Nos. 0-2973, 0-3040 and 0-3417, copies of which we enclose herewith. In addition to the authorities cited in these opinions, we refer to the recent case of Miller, et al v. County of El Paso, et al, decided on April 23, 1941, not yet reported, wherein Chief Justice Alexander declared:

"We are therefore met at the outset with a law which, under facts well known at the time of its adoption, was applicable only to a single county. Clearly then it is a local law and must fall as such, unless it can be fairly said that the class so segregated by the Act is a substantial class and has characteristics legitimately distinguishing it from the remainder of the State so as to require legislation peculiar thereto. In this instance the classification is made to rest entirely on the population of the county and a city therein. Resort to population brackets for the purpose of classifying subjects for legislation is permissible where the spread of population is broad enough to include or segregate a substantial class, and where the population bears some real relation to the subject of legislation and affords a fair basis for the classification. It has been legitimately employed in fixing fees of offices in certain cases (Clark v. Finley, Comptroller, 93 Tex. 178), but even then it is permissible only where the spread of population is substantial and is sufficient to include a real class with characteristics which reasonably distinguish it from others as applied to the contemplated legislation, and affords a fair basis for the classification. Bexar County v. Tynan, 97 S. W. (2d) 467."

Honorable Homer Leonard, Page 3

It is our opinion, therefore, that Senate Bill No. 453 violates Section 56 of Article 3 of the Constitution of Texas.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED MAY 26, 1941

Homer Leonard

FIRST ASSISTANT
ATTORNEY GENERAL

By

Walter R. Koch

Walter R. Koch
Assistant

WRK:RS

ENCLOSURES

